

**STATE OF FLORIDA  
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

IN RE: PETITION FOR DECLARATORY STATEMENT BY  
ROBERT E. HOLLAND, SR. D/B/A R.E. HOLLAND & ASSOCIATES, INC.

Agency Clerk # A81926

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**FINAL ORDER DENYING PETITION**

Mr. Robert E. Holland, Sr., presently doing business as R.E. Holland & Associates, Inc., referred to herein collectively as "Petitioner," has petitioned the Board of Professional Surveyors and Mappers ("Board") for a declaratory statement pursuant to Section 120.565, Florida Statutes. On September 17, 2012, the Agency Clerk for the Department of Agriculture and Consumer Services ("Department") received a Petition for Declaratory Statement filed by the Petitioner. Notice of the Receipt of the Petition was published in *Florida Administrative Register* on October 2, 2012 at Vol.38/42 on October 3, 2012. A public hearing was held on November 14, 2012. The Board was represented by Ms. Tracy J. Sumner, Esq. The Petitioner was not present.

**PRELIMINARY STATEMENT**

Section 120.565, F.S., provides the authority for administrative agencies to issue declaratory statements:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Register and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Register. Agency disposition of petitions shall be final agency action.

This statutory provision has been incorporated into the Florida Uniform Rules of Administrative Procedure as Rule 28-105.001, F.A.C., "Purpose and Use of Declaratory Statement."

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Rule 28-105.003, F.A.C., "Agency Disposition," provides:

The agency may hold a hearing to consider a petition for declaratory statement. If the agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting. The agency may rely on the statements of fact set out in the petition without taking any position to the validity of the facts. Within 90 days of the filing of the petition, the agency shall render a final order denying the petition or issuing a declaratory statement.

Thus, according to the language of §120.565, F.S. and the underlying administrative rules, the Legislature clearly intended the use of declaratory statements to be limited in scope.

#### JURISDICTION

Because the Petitioner requests a declaratory statement regarding the applicability of a statute regulating the practice of surveying and mapping in the State of Florida, the Board has jurisdiction. See generally, §§472.001, 472.007, F.S.

### THE PETITION

The Petition, a copy of which is attached to this Final Order as Exhibit "A" and incorporated herein, requests the opinion of the Board regarding whether "red line as-built" is included in the definition of "As-Built Survey" as defined by 5J-17.052, F.A.C., as it applies to the construction layout and post construction layout and post construction as-built surveying services his surveyor and mapper firm provided to a local governmental utility authority.

### PARTICULAR SET OF CIRCUMSTANCES

The Petition states that Petitioner's firm was contracted by T.B. Landmark Construction ("TBL") to provide initial construction layout and post construction as-built surveying services on a new force main construction project for a local governmental utility for a lump sum proposal. Petitioner states that in the middle of construction TBL requested that Petitioner submit monthly "as-built" draw requests which also would include red line drawings showing the stage of progress of construction. TBL subsequently refused to pay for the extra costs in preparing numerous monthly as-built services which included redline as-built drawings.

### CONCLUSIONS OF LAW

When determining the availability and scope of a declaratory statement, courts are guided by criteria applied to requests for declaratory judgment under Ch. 86, F.S., because the proceedings are so similar. *Couch v. Dept't of Health & Rehabilitative Serv.*, 377 So. 2d 32, 33 (Fla. 1<sup>st</sup> DCA 1979), *Okaloosa Island Leaseholders Ass'n, Inc. v. Okaloosa Island Auth.*, 308 So. 2d 120, 122 (Fla. 1<sup>st</sup> DCA 1975). Accordingly, "a complaint for declaratory relief must allege facts showing that there is a bona fide, actual, present and practical need for a declaration." *Okaloosa Island*, 308 So. 2d at 122, *Couch*, 377 So. 2d at 33. Declaratory relief is

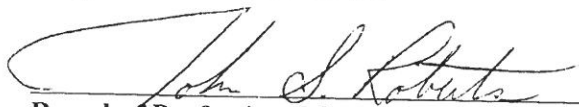
not granted for questions that are hypothetical or remote in time, or when the purpose is merely to obtain legal advice. See id.

Further, although there may be valid exceptions, declaratory statements which request a ruling on a previously committed act are properly denied. *Novick v. Department of Health*, 816 So. 2d 1237, So. 2d 1237, 1240 (Fla. 5<sup>th</sup> DCA 2002).

In this case, Petitioner, is requesting a declaratory statement on actions that have already occurred and are contractual in nature.

**IT IS HEREBY ORDERED AND ADJUDGED** that the Petition is **DENIED**.

**DONE AND ORDERED** this 31<sup>st</sup> day of December, 2012.

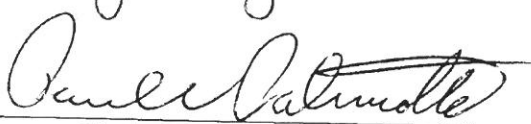


**Board of Professional Surveyors and Mappers**  
John S. Roberts, Executive Director,  
For Howard Ehmke, Chair

### NOTICE OF RIGHT TO APPEAL

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to S. 120.68, F.S. and Rule 9.110, Florida rules of Appellate Procedure. Review proceedings must be instituted by filing a Petition or Notice of Appeal with the Clerk, Room 509 Mayo Building, Tallahassee, Florida (30) days of rendition of the Declaratory Statement.

Filed with the Clerk, this 3<sup>rd</sup> day of January, 2013.

  
\_\_\_\_\_  
Agency Clerk

Copies by Certified U.S. Mail, RRR, # \_\_\_\_\_  
Petitioner Name and Address:  
9770 Baymeadows Rd., Suite 105, Jacksonville, FL 32256

By hand delivery:  
Ms. Tracy J. Sumner, Board Counsel